

Letter of Findings Number: 04-20130084P
Tax Administration
For Tax Year 2010-11

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business and retail merchant. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected sales tax on sales which were subject to sales tax. The Department therefore issued proposed assessments for Indiana sales tax, ten percent negligence penalties, and interest for the tax years 2010 and 2011. Taxpayer protested the imposition of the negligence penalties. An administrative hearing was held and this letter of findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

The Department issued proposed assessment for penalties on failure to remit sales tax for the tax years 2010-11. Taxpayer protests the imposition of penalties and requests a waiver of that penalty. Taxpayer states that this was its first audit and that it now understands its duties regarding sales tax. Taxpayer has also implemented procedures to ensure that it will meet its sales tax duties in the future.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence; . . .
the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

In this case, Taxpayer failed to collect and remit Indiana sales tax on some sales which were properly subject to Indiana sales tax. The Department considered this to constitute negligence and so imposed penalties under IC § 6-8.1-10-2.1(a). As a result of the protest process, Taxpayer has affirmatively established that it acted reasonably in its efforts to comply with Indiana's sales tax requirements, as required by [45 IAC 15-11-2](#)(c). The negligence penalties will be waived. However, the Department takes this opportunity to inform Taxpayer that it is now on notice of its sales tax duties and any failure to meet those obligations in the future may result in penalties

for subsequent years.

FINDING

Taxpayer's protest is sustained.

Posted: 05/29/2013 by Legislative Services Agency
An [html](#) version of this document.